UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/571,606	02/27/2007	Ingo Meirick	4147-144	9780

23117   7590   05/11/2010
NIXON & VANDERHYE, PC
901 NORTH GLEBE ROAD, 11TH FLOOR
ARLINGTON, VA 22203

EXAMINER
PATEL, MAHENDRA R

ART UNIT	PAPER NUMBER
2617	

MAIL DATE	DELIVERY MODE
05/11/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

	Application No.	Applicant(s)
Advisory Action ***Before the Filing of an Appeal Brief***	*10/571,606*	MEIRICK ET AL.
	Examiner	**Art Unit**	
	MAHENDRA PATEL	2617	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>19 April 2010</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

  a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

  b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

    Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

  (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

  (b)☐ They raise the issue of new matter (see NOTE below);

  (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

  (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

      NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

  The status of the claim(s) is (or will be) as follows:

  Claim(s) allowed: _____.

  Claim(s) objected to: _____.

  Claim(s) rejected: *1-29*.

  Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>see below.</u>

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

  /VINCENT P. HARPER/
  Supervisory Patent Examiner, Art Unit 2617

Applicant argues that Besset does not disclose at least the following three features recited in claim 1"
1) the base station system compares a size of a data packet segment with a size of a next consecutive data packet segment in the buffer;
2) the base station system identifies a complete data packet in the buffer based on the comparison; and
3) the base station system discards the identified data packet segment from the
4) Yuan does not disclose discarding an identified complete data packet from a buffer. In contrast, Yuan merely prevents a complete data packet segment from entering the buffer. As a result, the complete data packet segment cannot be discarded from the buffer because it was never stored in the buffer.

However (1), Besset teaches updating counter value based on the length of the received packet in (Col 6, lines 26-35 (i.e. for each incoming CPS packet, the Length Indicator field (LI) of the CPS Packet header is read to determine the length of the arriving CPS Packet; the thus determined length of the arriving CPS packet is used to update a buffer occupancy counter which is configured to store at least one amongst: i) the instantaneous number of octets used in the buffer for a given AAL2 connection). In (Col 9, lines 25-26) it teaches whether packet is to be stored or not (i.e. There then follows an algorithm which determines whether this packet is to be stored in the buffer 40 or discarded). This means algorithm is reading packet header to find its size. In (Col 9 lines 26-29] it determines whether packet is discarded or not based on length of the received packet and current filling of the buffer. If packet is not discarded, then it stores in the buffer and counter is updated to include the received packet. From this, it is obvious that Algorithm is comparing size of the previous packet to determine whether it can be stored in the buffer or not. In (Col 8, lines 55-65), it is clearly described that "If the buffer is in a state of congestion (CONG_VAL=OK)--as determined at a previous sampling--the algorithm passes along branch b1, and the value CPS_CO+LI+1+3 is compared with the lower threshold". From this disclosure, it would have been obvious to one of ordinary skill in the art at the time of the invention that when buffer is empty and first packet segment is stored in the buffer, then second packet segment will compare with first packet segment (which is stored in the buffer) to find out whether buffer is filled above or below the threshold level. In other words the Algorithm will compare first and second packet segments (i.e. consecutive data packet segments) to find out size of the packet, total size stored in the buffer and congestion level. Therefore Besset teaches first argument, namely, said base station system comparing a size of a data packet segment with a size of a next consecutive data packet segment in said buffer.

(2) Besset teaches a Counter and building of complete packet in (Col 2, lines 66-67) (e.g. Thus, in the case of a segmentation, the UUI field has the value "26" to indicate receipt of an end of SSSAR SDU (150 octets in the example), and the value "27" to indicate that more data follows. (Col 3, lines 3-5) (E.g. In other words, all the while UUI field yields "27", the received packets are incomplete and as soon as it yields "26", the packets can be reassembled (I.e. indication of the completed data packet) and will belong to a given SSSAR SDU). It would have been obvious to one of ordinary skill in the art at the time of the invention that when buffer is empty and first packet segment is stored, when second packet arrives, algorithm will compare with first packet length to determine congestion level. And from header, it will determine if last packet is arrived before reassembling. Therefore Besset teaches Second argument, namely, said base station system identifying a complete data package in said buffer based on said comparison.

(3) Besset teaches a packet comparison and Packet Discard Algorithm. It is discloses that (Col 9, lines 32-60) If the higher threshold 42 of the buffer memory 40 is set to leave a sufficient margin before overflow to accept an AAL2 SDU frame of maximum length (For example, Set level so that second packet segment causes overflow). According paragraph (Col 5, lines 10-20), if second packet segment causes overflow, then that packet segment is discarded (Co 5, lines 15-20) (e.g. in the case of a first CPS packet of an AAL2 service data unit (SDU) frame, it is detected if the buffer means are in a state of congestion; in the case of a congestion, the first CPS packet and all the following CPS packets are discarded up to and including the CPS packet for which it is detected that the UUI field of that CPS packet corresponds to the last CPS packet of the current AAL2 SDU frame). it would have been obvious to one of ordinary skill in the art at the time of the invention that when buffer is empty and first packet segment is stored, and if overflow level is set so that the second packet is caused overflow, then the algorithm compares two packet segments (i.e. with one already stored in the buffer), and find out that congestion occurred, then the packet segments are discarded. In other words the Algorithm is comparing two packet segments and discarded identified data packet. Therefore Besset teaches third argument, namely, said base station system discarding said identified complete data packet from said buffer.

(4) Yuan teaches a method for segmenting data packets ([Col 1, lines 10-17] (e.g. Cell relay systems, such as asynchronous transfer mode (ATM) systems, transmit data over a network as a plurality of fixed-length cells. The individual transmissions typically include one or more cells that constitute a portion of variable-length packets used by end systems or applications. Before transmission, a source station segments a packet into one or more cells and then transmits the cells (i.e. A complete data packet is build and transmitted). Yuan also teaches discarding of an identified complete data packet in (Col 2, lines 48-55) (e.g. Systems and methods consistent with the present invention provide a cell discard scheme for an output port within a cell relay switch. The output port either guarantees delivery of all of the cells of a packet or drops all the cells (i.e. complete packet) beginning with the first one. The output port decides whether to store an incoming cell based on whether the buffer has sufficient capacity to store all of the cells of the associated packet). In Combination with Besset, Yuan teaches discarding an identified complete data packet from a buffer.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See In re Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); In re Merck & Co., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In the present response of the instant application, the Applicant's arguments essentially do not traverse the issue(s) as addressed above and/or as rejected in the office final Action. Therefore, in view of the reasons above, the Final Action mailed on 19 April 2010 is maintained.